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Targeting Enemy Leaders: Panacea or Pandora's Box?

by

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The contents of this paper reflect my own personal views and are not necessarily endorsed by the Naval War College or the Department of the Navy.

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INTRODUCTION

Targeting an enemy leader, as a form of offensive command and control warfare is neither a panacea nor a veritable Pandora's Box, but can be a valuable element to a campaign plan when properly considered and planned. In Operational Warfare, Milan Vego's discussion of operational design includes the statement, "[0]ne option that could be more effective, but is politically and legally too sensitive to consider, is to pose a direct threat to such authoritarian or totalitarian rulers and their inner circle." This dismissal of targeting an enemy leader as an option in campaign design satisfies neither the proponents of such action nor those who would categorically condemn it. Modern precision weapons coupled with the concern to limit collateral damage makes targeting specific enemy leaders an attractive option. However, much of the debate on the issue of targeting enemy leaders places too much emphasis on alleged legal restrictions, and too little on the military considerations.

This paper explores targeting specific enemy leaders from the legal, political, and military perspectives in order to determine when and under what circumstances such action is warranted. First, the legal and policy considerations are examined and a distinction drawn between targeting enemy leaders and assassination. Recommendations for changes to the law or policy are also explored. Second, the military perspective is examined to discern which planning considerations are most relevant and important in making a decision regarding potential targeting of enemy leaders. The summary includes some principles or "rules of engagement" with respect to planning and targeting enemy leaders.

The Law

International law experts differ, as they have throughout history, as to what actions are permitted or prohibited by the "law." This unsatisfying ambiguous quality of the law of armed conflict stems from the fact that the rules that comprise it have largely evolved from the customs and practices of nation states. Adding to the uncertainty is the fact that until very recently no mechanisms for enforcement existed and the victors of conflicts often dictated what was lawful and what was not.

The law governing armed conflict, like all law, changes as societies and technology change. This too adds to the difficulty in concluding just what the rules are as they apply to contemporary situations. Early laws of war were based primarily on chivalry and denounced dishonorable methods of combat, methods that are readily acceptable and "lawful" today. For instance at one time the use of a crossbow was condemned as a weapon that allowed one to strike an enemy without the risk of being struck. ii Yesterday's treachery, more fully explained below, is today's doctrine.

Before getting to the specifics with respect to targeting an enemy leader, it is important to set forth some basic principles of the law of armed conflict and targeting. These principles are the yard stick by which we must measure our proposed actions and by which we must govern our conduct. The principles of importance here are those born of humanitarian concerns. The most basic principle is that the right of a belligerent to injure the enemy is not unlimited. The principles of military necessity, proportionality, and

identification (or discrimination) are also essential to targeting issues.

Military necessity justifies that conduct not forbidden by international law which is indispensable for securing the complete submission of the enemy. This principle seeks to limit military actions to those that are necessary, or one might say relevant, to the successful accomplishment of the mission. Proportionality is a balancing of the loss of life or damage to property against the military advantage to be gained. The loss and damage must not be out of proportion to the military advantage; otherwise even lawful targets may be prohibited. The principle of identification requires one to discern between lawful and unlawful targets, such as between combatants and noncombatants or a church and a military headquarters.

With those principles in mind, let us turn to the question of the legality of targeting enemy leaders. A few questions come immediately to mind. Does the targeting of a specific enemy leader violate the law of armed conflict? Does such a targeting decision constitute assassination? Does Executive Order 12333 prohibit such conduct regardless of the applicable law of armed conflict?

Let us first dispense with the notion that targeting a specific enemy leader is assassination. It is not. Assassination has long been a prohibited act according to most law of war commentators and scholars. Executive Order 12333 prohibits any employee or one acting on behalf of the U.S. to engage in, or conspire to engage in assassination. However, targeting an enemy leader is a lawful act of war and has been long recognized as such. In the seventeenth century, Hugo Grotius found no objection to an attack on an enemy leader by slipping into his camp at night and slaying him as he

slept. Emer de Vattel came to the same conclusion, in his eighteenth century work. These early scholars on the law of war condemned only the treacherous or perfidious killing of an enemy leader as assassination.

The terms treachery and perfidy are often used synonymously but their meanings have subtle differences. These terms are not defined well in international law source documents. A treacherous attack is one that betrays an obligation of good faith owed to the intended victim. A perfidious act is also treacherous but specifically includes:

Acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or obligated to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence.xii

Any killing through treachery, whether it be of a common soldier or commander-in-chief, violates Article 23(b), Annex to Hague Convention IV, 1907. An attack on an enemy leader through treachery or perfidy is contrary to the law, whether we label it assassination or not.

The Lieber Code, promulgated as General Order No. 100 by

President Lincoln in 1863, was an early codification of the law of war
in the United States and is often cited for its proscription against
assassination. Assassination is explained as proclaiming an
individual enemy "an outlaw, who may be slain without trial by any
captor...."

This ban on assassination is continued in modern
regulations in U.S. Army Field Manual 27-10, The Law of Land Warfare,
which states that "Article 23(b) Annex to Hague Convention IV, 1907
is construed as prohibiting assassination...."

The common thread
throughout all the commentators, codes, and conventions is the

required element of treachery to make the killing of an enemy leader into an unlawful action under the law of armed conflict.

What then does Executive Order 12333 mean to the targeting of an enemy leader? The answer is very little when involved in justified armed conflict and the specific target is a lawful combatant. The Executive Order deals with intelligence activities, not armed conflict. The original Order issued by President Ford is largely regarded as a result of the Church Committee hearings and the commentary to the Committee's report excepts a war situation from its recommendation on assassination. Neither Executive Order 12333, nor its predecessor Orders, were intended to regulate conduct in war or armed conflict. The applicable legal rules are those for targeting discussed above. Is the enemy leader a legitimate (or lawful) target and are the means to be employed lawful? If the answer to these questions is yes, then the killing of an enemy leader is not assassination and not in violation of the law of armed conflict.

The 1977 Additional Protocols to the Geneva Conventions were an attempt to further address the protection of the civilian population from the increasing effects of advanced weapons and the difficulties inherent in guerilla warfare. **Vi** Killing a single individual or specific group avoids the evils that the Protocols seek to avoid: collateral damage, human suffering, and destruction of personal property. When the principles of military necessity, proportionality, and identification are applied to targeting enemy leaders we see that killing a specific individual is arguably the best course of action rather than an unlawful one. It limits death to the absolute minimum, precisely identifies and distinguishes between a

single combatant and noncombatants, and thereby balances minimal death and destruction against significant military gain.

The existing confusion between law and policy has its origin in Executive Order 12333. The Order does not define assassination and therefore continues to create rather than eliminate misunderstanding. For example, a retired senior military officer, commenting about Hussein and the Gulf War, stated, "Because of the law, we can't directly target him. If you're purposely tracking him and he's in Building 2 and we target Building 2, that's assassination." This interpretation of "the law" is wrong. One presumes the interpretation comes from trying to apply Executive Order 12333 to armed conflict. A simple and effective solution to this problem is to define assassination in the Order. In an article appearing in the Maryland Journal of International Law & Trade, author Thomas Wingfield recommends the following addition to Executive Order 12333:

Assassination means the treacherous targeting of an individual for a political purpose. The otherwise legal targeting of lawful combatants in armed conflict, including all members of an enemy nation's or organization's operational chain of command, is not assassination and is not forbidden by this Order. **viii*

POLITICS

The foregoing does not mean, however, that in cases involving armed conflict the military planner can ignore Executive Order 12333's prohibition of assassination. The reason is best explained by Clausewitz in his seminal pronouncement that "war is nothing but the continuation of policy with other means."

a strategic problem Clausewitz more fully explained how and why politics play a role:

War is not an independent phenomenon, but the continuation of politics by different means. Consequently, the main lines of every major strategic plan are largely political in nature, and their political character increases the more the plan applies to the entire campaign and to the whole state. A war plan results directly from the political conditions of the two warring states, as well as from their relations to third powers. A plan of campaign results from the war plan, and frequently - if there is only one theater of operations - may even be identical with it. But the political element even enters the separate components of a campaign; rarely will it be without influence on such major episodes of warfare as a battle, etc. According to this point of view, there can be no question of a purely military evaluation of a great strategic issue, nor of a purely military scheme to solve it."

Executive Order 12333 is born of politics and although the Order does not specifically govern military conduct in armed conflict, the policy against assassination is commonly interpreted more broadly, to include targeting specific individuals.

Air Force Chief of Staff General Michael Dugan was relieved after having told reporters that Saddam Hussein would be a target. There should be no doubt for the military planner that targeting specific enemy leaders is never a subject for public disclosure. In World War II, Admiral Yamamoto's plane was intercepted and shot down. This action is often erroneously referred to as an assassination, but was clearly not. Xaiii Yamamoto was a lawful target, a combatant, and he was killed by lawful means, shot down by marked U.S. warplanes. But the operation to intercept the plane was a secret not only to keep the Japanese unaware that we had broken their codes, but because targeting individuals was then, and remains today, a politically sensitive affair. Admiral Nimitz sought Presidential approval for the operation to intercept and kill Yamamoto.

The political repercussions of a negative world opinion can be severe. Our position as the world's sole superpower is a double-edged sword. On the one hand our power provides influence, on the other it attracts increased scrutiny, distrust and criticism. Targeting an enemy leader must be carefully calculated in terms of world opinion. Even our actions in the Gulf War against the naked aggression of Iraq have been criticized. Critics of targeting enemy leaders often confuse law with policy. During the Vietnam War it was President Johnson's policy of graduated response which led to the ineffective Rolling Thunder bombing campaigns, but the law was often erroneously cited as the reason for the targeting restrictions.

However, there continues to be a steady flow of calls for targeting enemy leaders (whether called assassination, tyrannicide, or by some other name) as an alternative to large-scale hostilities or the use of more indiscriminate weapons. **xvii* The arguments are persuasive. Proponents argue that killing a single individual is an efficient and cost effective means of deterring or ending a conflict while avoiding large scale conflict and the death and destruction that accompany it. Not only can civilian casualties be avoided to a great extent, but the need to place large numbers of our own forces at risk is likewise averted. The threat of targeting an individual leader or the ruling elite of a totalitarian regime may be the only effective way to deter aggressive conduct. xxviii Tyrannical leaders often seem to care little about the suffering of their own people. Killing a specific individual, or even several, appears to be the humane course of action and complies with the basic principles of the law of armed conflict.

Why has the United States political leadership not formally adopted this strategy for its deterrent value, its apparent effectiveness, and its avoidance of unneeded death and destruction? One reason might be the mistaken opinion that targeting a specific individual is tantamount to assassination or murder. No matter how dastardly the enemy, the U.S. fights fair and assassination is not fair in the minds of many Americans. One commentator distinguishes tyrannicide from assassination as an unselfish act, but condemns such actions for ignoring due process and the "highest purpose of political life."xxix Due process does not apply to targeting in armed conflict; the law does not require us to give our enemy notice and an opportunity to be heard before we strike him. Confusion is not limited to laymen, and the legal community continues to argue the legality of targeting enemy leaders. XXX Until the legal issue is more settled, those in opposition to targeting enemy leaders can legitimize their opposition with legal arguments. xxxi

Moral arguments against killing specifically targeted leaders seem to be effective only if one accepts the premise that the killing is assassination (or unlawful). Otherwise, killing a specific leader is no different than killing any other combatant. Finally, opponents argue that the apparent effectiveness and efficiency of targeting an enemy leader is a façade. It is this issue that leads to the military operational factors for targeting enemy leaders.

Military Considerations

Proponents of targeting enemy leaders, whether they call it assassination or not, often envision a scenario in which the enemy leader is killed by a precise military action and thereafter the offending action or policies are quickly abandoned; a quick and easy solution to the problem. Those opposed are quick to dismiss targeting an enemy leader as an impossible mission that can not accomplish its objective. Although they examine historical cases, few proponents or opponents of targeting enemy leaders analyze the cases through application of the art of operational warfare.

Targeting an enemy leader is a form of offensive command and control warfare. During the Gulf War of 1990-1991, the U.S. targeted Iraqi leadership. Target planners included facilities that might house Saddam Hussein, and presumably other military leaders, such as the Ministry of Defense and Baath Party Headquarters. Despite the relief of General Dugan mentioned above, many observers argued that simply killing Hussein was the best way to accomplish our objectives in the Gulf. Hussein, it is argued, was the enemy strategic center of gravity. If he had been killed, all would have been right.

Professor Milan Vego defines center of gravity as that

source of massed strength - physical or moral, or a source of leverage- whose serious degradation, dislocation, neutralization, or destruction would have the most decisive impact on the enemy's or one's own ability to accomplish a given military objective. **xxxiii*

Vego goes on to state that invariably centers of gravity are discovered among critical strengths, never the critical weaknesses or critical vulnerabilities, of the enemy. **xxiv** Critical strengths are those capabilities that are vital to accomplishment of a military

objective and adequate; critical weaknesses are sources of power that are essential to mission accomplishment but are grossly inadequate to the task.**

Proper planning and campaign design stem from an operational idea directed at the destruction or neutralization of the enemy's strategic or operational center of gravity.

In recent history, the U.S. has repeatedly labeled opposing regimes as strategic centers of gravity. Examples include the Iraqi regime and the North Korean regime. We know that these totalitarian regimes are ruled by the edicts of single individuals. It therefore appears quite logical that targeting these leaders is the way to quick and decisive victory by eliminating the strategic center of gravity. However, a close examination of centers of gravity might reveal that we erred in our designation of these leaders as strategic centers of gravity.

Deciding what is and is not an enemy center of gravity is not an exact science, it is an important part of the art of operational war. Accepting an enemy leader or regime as a strategic center of gravity requires careful and critical consideration. Centers of gravity that are intangible, like enemy will and morale are inherently vague and difficult to analyze. Killing an individual leader, whether it is lawful conduct pursuant to armed conflict or an unlawful assassination, is highly unpredictable in its range of consequences. Conversely, physical centers of gravity are subject to objective analysis. A campaign that plans to eliminate the physical capability of the enemy to do harm is superior to the campaign that seeks to eliminate his will to do harm. In the former we know when the enemy can no longer hurt us through objective

standards, in the latter we can only hope that the enemy chooses not to do so.

Selecting an enemy leader as a center of gravity appears to be a natural and logical outgrowth of offensive command and control warfare. Eliminating a totalitarian leader, like Hussein, gets to the root of the problem, the commander himself. However, this is a distortion of offensive command and control warfare. The appropriate target of command and control warfare is the act of commanding (the ability of operational leaders to orchestrate their forces), not the commander. This is an important distinction because destroying the commander does not destroy the capability (of someone else) to command.

Properly identifying centers of gravity has never been easy. During the invasion of Sicily in World War II, the Allies' objective was Messina. Both the British and U.S. Armies concentrated their effort on the capture of this physical objective. The campaign planners for the Sicily operation failed to recognize that the German forces on the island were the center of gravity. The port of Messina was important only in so far as it represented the initial resupply and eventual escape route for the German forces. The Allies captured Messina, but large numbers of German forces escaped to fight again because the planners did not recognize the thing that could do harm, the German forces, as the center of gravity. Similarly, it is the ability to command and control forces in the field that can do harm, not the individual commander. Therefore the true center of gravity is not the commander himself but the ability to command and control forces. In the Gulf War, the U.S. properly targeted not simply Hussein, but the Iraqi infrastructure for command and control.

When targeting a specific enemy leader it is important to consider the ability of military power to produce the desired end state. Military power, even when applied through the precise targeting of an enemy leader, is not an effective way to change a society. In most cases a totalitarian ruler is the result of circumstances and conditions that allow him to come to power. Until the underlying conditions are changed, simply killing the ruler is insufficient to create the desired end state. Military power is best employed to destroy the military capability of the enemy. At that point neither the ruler nor the totalitarian state has the capacity to do harm. Another consideration is the need to have a viable government with which to end the war. History has shown that the absence of a legitimately recognized government can result in difficulty in ending the war and an ineffective peace. **DON**INDICATE:

Proponents of targeting enemy leaders often assume that killing the leader is all that is necessary to achieve success. This is a poor assumption for a couple of reasons. First, the successor to power might be no better, or even worse, than his predecessor. In a totalitarian regime, it is more likely that the enemy leader has surrounded himself with people of like mind and loyalty than with those of opposing opinions and beliefs. Another problem is that it is dangerous to assume that the "bad" guy in our eyes is seen in the same way by his own people. This is one time when mirror imaging might be a useful exercise. What would U.S. reaction be to the specific targeting of the Commander-in-Chief?

Those who argue that all we need do is kill the totalitarian ruler are guilty of script writing. The script assumes the people dislike the ruler, that they do not dislike us, and that his death

will bring immediate reform. The script ignores the possibility that the ruler is not as hated as we believe, that we are hated more than we believe, and that there is another leader of the same caliber in waiting, now armed with a political tool to gather the support of his own people.

All the above is not meant as a blanket condemnation of targeting enemy leaders. Under the correct circumstances, targeting an enemy leader might have a great deal of utility. For instance, the successor to a leader who has been specifically targeted might decide his life is worth more moderate policies. However, there are some basic rules of engagement. Foremost is the understanding that targeting a specific enemy leader is not a stand-alone course of action. Enemy leaders might be a center of gravity but I would argue that they are never the strategic center of gravity and elimination of the leader is not tantamount to victory. While Vego advocates attacking the intangible elements of combat power (such as enemy leadership, morale, and discipline), he also counsels the operational commander to pay close attention to the tangible elements of combat power. ** The Weinberger doctrine sets out a number of suggested criteria for the use of military force. *** According to one of the criteria the military should be committed only when sufficient force (the Powell corollary to the doctrine argued for overwhelming force) is employed to guarantee victory. Adherents to this doctrine can not logically accept targeting an enemy leader as the lone course of action for a military campaign. It is extremely difficult to successfully target a specific individual. Enemy leaders are best targeted and attacked at the time and place that coincides with other offensive actions against the enemy so as to disrupt the enemy's

command and control at the time it is most needed to direct forces in the field.

Targeting enemy leaders requires extensive intelligence.

Intelligence is needed not only to facilitate the actual targeting but to discern what targeting the enemy leader will bring about. Human intelligence on the mood and morale of the enemy population and their likely reaction to the death of the leader is imperative.

Intelligence is also needed to know what and who make up the line of succession to power.

SUMMARY

Targeting enemy leaders is neither a panacea nor a Pandora's box.

Military leaders must understand and carefully analyze the legal,

political, and military considerations in order to provide meaningful

and effective advice to the National Command Authorities. Certain

rules of engagement can be stated to help frame the decision process.

The law of armed conflict is ironically the least difficult dimension of targeting an enemy leader. When the U.S. is engaged in the legitimate use of force, e.g., pursuant to a United Nations authorizing resolution, an enemy leader who is a combatant may be targeted by any and all lawful means. Killing under such circumstances is in accord with the law and not assassination or murder.

The political dimension of the issue is more ambiguous, but certain requirements seem apparent for ultimate success. The enemy leader must be a clear aggressor and preferably has been labeled as such by the United Nations or the vast majority of states. World opinion must be strongly in favor of the use of force against the enemy state.

The most difficult considerations when targeting enemy leaders are the military ones, but certain rules will help in making the right decision. First and most importantly, target the enemy leader only in concert with other courses of action. Design the other courses of action to adversely effect the enemy's tangible elements of combat power. Target specific enemy leaders only when adequate intelligence provides a clear picture of the likely reaction of the enemy population and the line of succession to power.

NOTES

ⁱ Milan Vego, Operational Warfare (Newport RI: Naval War College 2000), 446.

ii L.C. Green, <u>The Contemporary Law of Armed Conflict</u> (Manchester: Manchester University Press 1993), 122.

 $^{^{}m iii}$ NWP 1-14M, The Commander's Handbook on the Law of Naval Operations, para. 8.1.

iv U.S. Army Field Manual (FM) 27-10, The Law of War, para. 3.

v Green, 331.

vi Ibid., 330.

vii For an extensive discussion on the history of assassination in international law and the opinion of numerous scholars see Patricia Zengel, "Assassination and the Law of Armed Conflict," <u>Military Law Review</u>. 134 (1991).

viii Executive Order 12333, "United States Intelligence Activities", 3 CFR 200 (1982), reprinted in 50 U.S.C. sec 401 (1991).

ix H. Grotius, DeJure Belli ac Pacis Libri Tres (rev. ed. 1646), reprinted in 3(2) The Classics of International Law 653 (F. Kelsy trans. 1925).

 $^{^{}x}$ E. de Vattel, Law of Nations 358 (1758) (J. Chitty ed/trans. 1883).

xi For a complete discussion of the meaning of treachery see Zengel, 128-132.

xii Additional Protocol I, Article 37, Geneva Conventions.

xiii Lieber Instructions, Article 148, 1863.

xiv FM 27-10, para. 31.

 $^{^{\}rm xv}$ Congress, Senate, Select Committee to Study Governmental Operations with Respect to Intelligence Activities, Select Committee on Intelligence Activities Interim Report, 94th Cong., 1st sess. (Washington, DC: 1975), 1.

xvi Edward Kwakwa, The International Law of Armed Conflict: Personal and Material Fields of Application (Boston: Klumer Academic Publishers 1992)

 x^{xvii} Richard J. Newman, "Stalking Saddam", <u>U.S. News and World Report</u>, (Feb 1998): 20-21.

xviii Thomas C. Wingfield, "Taking Aim at Regime Elites: Assassination, Tyrannicide, and the Clancy Doctrine, " The Maryland Journal of International Law and Trade, 22 (Fall 1998): 287, 317.

xix Paret, ed., On War (Princeton: University Press 1976).

xx Ibid., 7.

xxi Zengel, 124, note 1.

Dan van der Vat, <u>The Pacific Campaign</u>, (New York: Simon & Schuster 1991), 262-63; Brian Michael Jenkins, "Should Our Arsenal Against Terrorism Include Assassination," Rand Corporation P-7303, Jan 1987, 9.

 $^{
m xxiii}$ W. Hays Parks, "Memorandum of Law: Executive Order 12333 and Assassination," The Army Lawyer, Dec 1989.

xxiv Brian Michael Jenkins, "Should Our Arsenal Against Terrorism Include Assassination," Rand Corporation P-7303, Jan 1987, 9.

xxv Ramsey Clark, "Report on United States War Crimes Against Iraq to the Commission of Inquiry for the International War Crimes Tribunal," http://deoxy.org/wc/wc-crime.htm.

xxvi C. B. Shotwell, "Economy and Humanity in the Use of Force: A Look at the Aerial Rules of Engagement," Journal of Legal Studies, 1993 edition, 17.

xxvii See Wingfield, Zengel, and Parks articles.

xxviii For a discussion of the difficulty of nuclear weapons as a deterrent and the need for a new solution see Wingfield, 293-95.

xxix Franklin L. Ford, Political Murder from Tyrannicide to Terrorism, (Cambridge: Harvard Univ Press) 1985.

xxx Wingfield, 313-314.

xxi For a discussion of the arguments for and against assassination as a tool against terrorism see, Jenkins, Brian, M., "Should our Arsenal Against Terrorism Include Assassination?" Rand Corp., Jan 1987

xxxii Vego, 229.

xxxiii Vego, 309.

xxxiv Vego, 309.

xxxv Vego, 307.

 $^{\mbox{\scriptsize xxxvi}}$ For a discussion of the effects and success of killing individual leaders see Ford, 387.

xxxvii The quick capitulation of Napoleon III to Germany in the Franco-Prussian War resulted in a new revolutionary government with whom Bismarck was unable to negotiate a quick end to the war. "Taking out" Napoleon frustrated Germany's desire for a quick decisive victory.

xxxviii Vego, 363.

xxxix Weinberger Doctrine provides that military force should be used only when the particular engagement is deemed vital to our national interest or that of our allies, we have a clear intention of winning, we have clearly defined political and military objectives and that we send the forces needed to accomplish the objectives, we continually reassess and adjust our objectives and forces, we have the support of the American people and Congress, and we commit forces to combat as a last resort. Taken from the text of an address by SecDef Caspar W. Weinberger to the National Press Club, as reported in New York Times, November 12, 1984.

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